

Message Text

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ACTION ACDA-10

INFO OCT-01 IO-13 ISO-00 CIAE-00 INR-07 L-03 NSAE-00

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ARA-06 EA-07 EUR-12 NEA-10 PM-04 H-02 PA-01 PRS-01

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TO SECSTATE WASHDC 8061

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E.O. 11652: N/A

TAGS: PARM, TECH, IAEA

SUBJECT: PNE AD HOC ADVISORY GROUP: LEGAL STUDY

A) IAEA VIENNA 6145; B) STATE 204476; C) IAEA VIENNA 5063

1. SUMMARY: IAEA SECRETARIAT WITH HELP OF UK LEGAL CONSULTANT HAS COMPLETED PNE LEGAL STUDY AND ANALYSIS REQUESTED BY JUNE PNE AD HOC ADVISORY GROUP. US COMMENTS INTENDED AS INPUTS TO THIS STUDY AND ANALYSIS HAVE BEEN SUBMITTED TO SECRETARIAT. MISSION PROVIDES VIEWS ON THESE COMMENTS TO ASSIST IN PREPARATION OF INSTRUCTIONS WHICH WILL BE NEEDED FOR NOVEMBER MEETINGS OF PNE AD HOC ADVISORY GROUP. END SUMMARY.

2. MISSION HAS RECEIVED ADVANCE COPY OF IAEA SECRETARIAT STUDY ENTITLED QUOTE NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES - SUMMARY ANALYSIS OF POSSIBLE STRUCTURE AND CONTENT OF LEGAL INSTRUMENTS UNQUOTE. THIS IS THE STUDY AND ANALYSIS REQUESTED OF THE SECRETARIAT BY THE PNE AD HOC ADVISORY GROUP DURING JUNE 1976 MEETING. THE DOCUMENT WAS PREPARED BY UK LEGAL EXPERT EDWARDS. LIMITED OFFICIAL USE

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BACKGROUND IS GIVEN IN REFTEL A.

3. THIS STUDY IS NOW IN TRANSLATION AND REPRODUCTION AND IS SCHEDULED FOR DISTRIBUTION IN EARLY OCTOBER. MISSION WILL PROVIDE COPEIS AS SOON AS RECIEVED. MISSION UNDERSTANDS THAT FINAL COPY WILL HAVE ONLY A FEW NON-SUBSTANTIAL DIFFERENCES FROM ADVANCE DRAFT WHICH WE HAVE RECEIVED AND HAVE POUCHED TO OES (KRATZER), ACDA (ROCHLIN), AND ERDA (DUFF).

4. US COMMENTS CONTAINED IN REFTEL B ON PNE AD HOC ADVISORY GROUP DOCUMENT GOV/COM. 23/13 WERE PROVIDED BY LETTER TO IAEA DG. REFTEL B, HOWEVER, WAS RECIEVED 18 AUGUST AFTER EDWARDS HAD COMPLETED THE STUDY AND ANALYSIS AND HAD LEFT VIENNA. COMMENTS WERE, THEREFOR, TOO LATE TO BE IMPUTS TO THE STUDY AND ANALYSIS.

5. SECRETARIAT HAS INFORMED MISSION THAT ONLY ONE OTHER COMMENT WAS RECIEVED, THIS FROM SWEDED AND ALSO TOO LATE TO BE USED IN STUDY.

6. SECRETARIAT HAS NO AUTHROITY TO MAKE CHANGES IN GOV/COM.23/13 AS INDICATED BY REFTEL B AND PLANS TO DO NOTHING FURTHER ON THIS MATTER, OTHER THAN TO DISTRIBUTE THE STUDY AND ANALYSIS IN OCTOBER. SECRETARIAT AHS DECIDED TO MERELY RETAIN THE US COMMENTS FOR LATER USE SHOULD THE COMMENTS BE RELEVANT TO ANY FURTHER WORK THE SECRETARIAT MIGHT UNDERTAKE IN RESPONSE TO A REQUEST BY THE PNE AD HOC ADVISORY GROUP.

7. WITH RESPECT TO THE SUBJECT MATTER OF GOV/COM.23/13, US REPS AT THE NEXT GROUP MEETING, BEGINNING 8 NOVEMBER, WILL NEED INSTRUCTIONS AS TO ACCEPTABILITY TO US OF ANNEX I OF GOV/COM.23/13, WHICH IS NOW AD REFERENDUM TO GOBERNXNTS, AND INSTRUCTIONS REGARDING THE HANDLING OF THE MATERIAL IN EDWARDS' STUDY AND IN ANNEXES II AND III OF GOV/COM.23/13. THESE LATER INSTRUCTIONS SHOULD COVER POINTS (A) - (D) IDENTIFIED IN PARA 4 OF REFTEL A. IT IS EXPECTED THAT THE GROUP WILL UNDERTAKE TO DRAFT ADVICE TO THE BOARD, BASED INTER ALIA UPON THIS MATERIAL, ON (A) THE FACTORS INVOLVED IN THE ESTABLISHMENT AND OPERATION OF AN INTERNATIONAL PNE SERVICE, AND (B) THE STRUCTURE AND CONTENT OF AGREEMENTS NECESSARY UNDER NPT ARTICLE V.

8. THE MISSION OFFERS THE FOLLOWING OBSERVATIONS AND COMMENTS SOLEY TO LIMITED OFFICIAL USE

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ASSIST IN THE PREPARATION OF THOSE FUTURE INSTRUCTIONS. MISSION STRESSES THAT MOST REPS ARE EXPECTED TO ENDORSE ANNEX I IN NOVEMBER WITH FEW, IF ANY, CHANGES AND THAT THE MATERIAL IN ANNEX I AND ESPECIALLY ANNEX II OF GOV/COM.23/13 REPRESENTS EXTENSIVE WORK AND CAREFUL FORMULATION TO ACHIEVE THIS DEGREE OF CONSENSUS. PARAGRAPHS 11 AND 12 OF REFTEL C PROVIDE SOME OF THE BACKGROUND OF THIS DRAFTING

WHICH INVOLVED FOUR DAYS OF WORK BY A DRAFTING GROUP FOR WHICH NO RECORDS WERE KEPT AND THREE SESSIONS OF THE AD HOC GROUP FOR WHICH FORMAL RECORDS ARE KEPT. COPIES OF THE OFFICIAL RECORDS OF THE SESSIONS (GOV/COM.23/OR.4 THROUGH 13) HAVE BEEN SENT TO OES, IO, ACDA AND ERDA IN THE ROUTINE TRANSMITTAL OF IAEA DOCUMENTS.

9. THE FOLLOWING MISSION COMMENTS ON REFTTEL B ARE KEYED TO SUBPARAGRAPH NUMBERS OF PARAGRAPH 2 OF REFTTEL B.

A. (ANNEX I, PARA 1) THE PHRASE "BASIC INTERNATIONAL LEGAL INSTRUMENT" WAS INTRODUCED TO STRESS IMPORTANCE PLACED ON NPT IN THIS REGARD BY A NUMBER OF STATES.

B. (ANNEX I, PARA 2) THE ADDITION OF THE SEVENTH PREAMBULAR PARA OF NPT WOULD LIKELY BE ACCEPTABLE TO THE GROUP, BUT SINCE IT STRESSES DEVELOPMENT OBLIGATIONS IT MAY NOT BE IN US INTEREST TO INTRODUCE THIS IN VIEW OF PARA 2C OF REFTTEL B.

C. (ANNEX I, PARA 6) PROPOSED CHAGE ADDRESSES ONLY NUCLEAR WEAPON STATES WHEREAS ORIGINAL WORDING COVERED BOTH NWS AND NNWS. BECAUSE OF PHRASE REGARDING NO OBLIGATION TO DEVELOP PNE DEVICES AS DISCUSSED IN PARA 11 OF REFTTEL C, CONSENSUS ON THE PROPOSED CHANGE IS PROBABLY IMPOSSIBLE. WHILE IT MITH BE POSSIBLE TO INCLUDE IN THE REPORT OF THE GROUP TO THE BOARD THIS POINT AS A NON-CONSENSUS VIEW, TO DO SO WOULD OPEN THE REPORT TO THE ADDITION OF NON-CONSENSUS VIEWS FROM OTHER STATES.

D. (ANNEX I, PARA 14) NO COMMENT.

E. (ANNEX I, PARA 15) THE PARTICIPANTS IN THE GROUP FOLLOWED THE GENERAL PRACTICE OF REFERENCING ONLY TO IAEA DOCUMENTS. ALL OTHER MATERIAL WAS QUOTED. IF THE US REQUESTS THE INTRODUCTION OF THE US DECLARATIONS AND UNDERSTANDINGS REGARDING LIMITED OFFICIAL USE

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PROTOCOL II OF THE TLATELOLCO TREATY, OTHER STATES MAY REQUEST INTRODUCTION OF THEIR INTERPRETATION AND UNDERSTANDING. THIS MATTER, LIKE A NUMBER OF OTHERS, IS A QUESTION OF WHETHER THE

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ACTION ACDA-10

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DOCUMENT IS INTENDED TO SHOW THE MAXIMUM DEGREE OF CONSENSUS OR
ALSO TO SHOW THE DEGREE OF DIFFERENCES.

F. (ANNEX I, PARA 18) NO COMMENT.

G. (ANNEX I, PARA 28) ORIGINAL WORDING WAS SUCH AS TO COVER STATE
SUPPLYING PNE SERVICE, STATE RECEIVING SERVICE AND OTHER
CONSULTANT STATES WHICH MAY HAVE HAD A SIGNIFICANT ROLE IN THE
PROJECT. PROPOSED CHANGE, WHILE ACCOMPLISHING ITS PURPOSE,
MAY GO FURTHER THAN NEEDED IN LIMITING LIABILITY.

H. (ANNEX I, PARA 30) ORIGINAL SENTENCE IS FACTUALLY
CORRECT IN THAT STATES PARTY TO A TREATY COULD DESIGNATE
ANOTHER BODY TO INTERPRET TREATY PROVISION. IN THE ABSENCE OF
ITS SPECIFIC DESIGNATION AS SUCH, AGENCY HAS NO INTERPRETATION
ROLE.

I. (ANNEX II, PARA 2) PROPOSED CHANGE IS FACTUALLY CORRECT,
BUT APPROACH TAKEN BY GROUP WAS GENERALLY TO ADDRESS
ONLY THE USE OF PNE. HENCE, WORDING OF THIS PARAGRAPH
INTENTIONALLY ADDRESSEES ONLY NUCLEAR EXPLOSIVES DESIGNED FOR
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PEACEFUL PURPOSES AND DOES NOT ADDRESS NUCLEAR EXPLOSIVES
DESIGNED FOR NON-PEACEFUL PURPOSES.

J. (ANNEX II, PARA 3) THE GROUP, OR AT LEAST THE MAJORITY OF
ITS ACTIVE MEMBERS, HAS SOUGHT TO USE ALL EXISTING MATERIAL,
INCLUDING THE NPT REVIEW CONFERENCE DECLARATION AND TO

PROGRESS AS MUCH AS CONSENSUS PERMITTED BEYOND EXISTING DOCUMENTS. HENCE, GROUP DID NOT WISH IN ANNEX II, ON CONTRAST TO ANNEX I, MERELY TO QUOTE NPT REVIEW-CONFERENCE FINAL DECLARATION BUT SOUGHT TO RECOMMEND A PRINCIPLE RATHER THAN SIMPLY IDENTIFY IT AS A POSSIBILITY.

K. (ANNEX II, PARA 9) CONCERN EXPRESSED ON THIS POINT BY REFTEL B WOULD SEEM TO BE ADEQUATELY COVERED BY SECOND SENTENCE OF PARA 5 OF ANNEX II, WHICH WOULD GOVERN ANY LEGAL ASSESSMENT, STUDY OR ASSISTANCE PROVIDED THROUGH THE AGENCY TO STATES. THERE ARE MANY LEGAL ASPECTS RELATING TO PNE PROJECTS, E.G. PRIVILEGES AND IMMUNITIES OF AGENCY OBSERVER PERSONNEL, FOR WHICH THE AGENCY IS COMPETENT TO OFFER LEGAL ADVICE OR ASSISTANCE. THE PURPOSE OF LISTING THE CATEGORIES OR ASSESSMENTS WAS TO IDENTIFY FOR THE BENEFIT OF INTERESTED STATES THE GENERAL AREAS IN WHICH THE GROUP FELT THE AGENCY SHOULD BE PREPARED TO PROVIDE ASSISTANCE EITHER THROUGH ITS OWN RESOURCES OR BY HELPING TO ARRANGE FOR THE ASSISTANCE.

L. (ANNEX II, PARA 10) SEE PREVIOUS PARAGRAPH.

M. (ANNEX II, PARA 11) SUBPARA (III) WAS ONE OF THE MORE DIFFICULT PARTS OF ANNEX II TO DRAFT. THE SOVIETS TOOK A STRONG POSITION THAT SOMETHING HAD TO BE SAID ABOUT INTERNATIONAL RADIATION STANDARDS. THE US TOOK THE EQUALLY FIRM POSITION THAT THE WORDS COULD NOT IMPLY ANY COMMITMENT OR OBLIGATION TO DEVELOP SUCH STANDARDS. THE CANADIANS AND THE JAPANESE INSISTED THAT IF ANY STANDARDS WERE DEVELOPED, THEY MUST BE CONSISTENT WITH THE LTBT. SUBPARA (III) WAS THE RESULT AND FOR ANY REFORMULATION TO RECEIVE CONSENSUS IT WOULD LIKELY HAVE TO TAKE INTO ACCOUNT AT LEAST THE ABOVE THREE POSITIONS.

N. (ANNEX II, PARA 13) NO COMMENT.

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O. (ANNEX II, PARA 15) MISSION AGREES THAT SUPPLIERS CHARGES FOR EXPLOSIVE SERVICES ARE DETERMINED SOLELY BY SUPPLIER AND MOST OTHER REPS AT GROUP ALSO AGREED, BUT A FEW STATES WERE UNWILLING TO ACCEPT A SITUATION WHEREIN A SUPPLIER COULD STATE ANY CHARGE IT WANTED AND THE REQUESTER HAD NO RECOURSE BUT TO PAY OR CANCEL THE PROJECT. HENCE, THE INTRODUCTION OF THE POSSIBILITY OF A DISPUTE SETTLEMENT PROVISION COVERING SUCH CHARGES. IN ADDITION, THE SECOND SENTENCE, THE DELETION OF WHICH REFTEL B REQUESTED, CONTAINS TWO PARTS WHICH SHOULD BE ASSESSED SEPARATELY.

P. (ANNEX II, PARA 16) THE FIRST SENTENCE OF SUBPARA (C) DOES NOT APPEAR TO BE REDUNDANT IN THAT IT DIFFERS FROM OTHER

FORMULATIONS IN PARA 16 AND IN PARTICULAR DIFFERS SOMEWHAT FROM
THE FIRST SENTENCE OF SUBPARA ().

Q. (ANNEX II, PARA 16, SUBPARA D) NO COMMENT.

R. (ANNEX II, PARA 17) SEE COMMENTS UNDER SUBPARA J, ABOVE
(ANNEX II, PARA 3). STONE

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